

National Program Planning 2010

League of Women Voters of Arizona

Recommends a Concurrence to change the LWVUS position on Selection of the President

Rationale

LWV Arizona and local leagues in the state believe a consensus to last year's NPV (National Popular Vote) study could have been reached (pro or con) if a decisive question had been asked along with the discussion questions. Most Leagues have studied this issue and the materials are still available on our LWVUS website. Many Leagues who participated (well over 50%) had complaints or difficulties with the final questions. We recommend that an 'up or down' vote is advisable and preferable to 'no consensus.'

Therefore we are recommending a concurrence (requiring 2/3rd vote of convention delegates) on the statement below (wording to fit into current position as seen in next section):

We support the use of the National Popular Vote Compact as one acceptable way to achieve the goal of the direct popular vote for election of the president, until the abolition of the Electoral College is accomplished.

If your League wishes to support the NPV compact as one acceptable way to achieve the goal of direct election of the president, your response at convention would be YES.

If your League wishes to oppose the NPV compact as one acceptable way to achieve direct election of the president, accepting a 'no consensus' result to the issue, your response at convention would be NO.

Clarifying the LWVUS Position

The League ALREADY has a position to abolish the Electoral College Adopted 40 years ago, the position was established in January 1970, (Revised March 1982 and updated June 2004). This concurrence statement could fit into our position as written below (with the additional statement underlined).

Selection of the President

(The concurrence would add only underlined words, nothing else is changed from our current position)

The League of Women Voters of the United States believes that the direct-popular-vote method for electing the President and Vice-President is essential to representative government. The League of Women Voters believes, therefore, that the Electoral College should be abolished. *We support the use of the National Popular Vote Compact as one acceptable way to achieve the goal of the direct popular vote for election of the president, until the abolition of the Electoral College is accomplished.* The League also supports uniform voting qualifications and procedures for presidential elections. The League supports changes in the presidential election system – from the candidate selection process to the general election. We support efforts to provide voters with sufficient information about candidates and their positions, public policy issues and the selection process itself. The League supports action to ensure that the media, political parties, candidates, and all levels of government achieve these goals and provide that information.

Background

All the LWVUS background papers on the NPV compact (including the pro / con papers) can be accessed by typing 'NPV' into the search box on the LWVUS homepage at www.lwv.org. If you wish to view NPV originators' website, you can visit www.nationalpopularvote.com. To view responses to challenges to the compact, click on 'answering myths' on their menu bar, or click here to read "Responses to Myths about the National Popular Vote Plan":

<http://www.nationalpopularvote.com/pages/answers.php> Please do not use these sources in place of the League materials.

If your League did not participate in this study but is sending delegates to convention we again encourage you to review the LWVUS papers. For your convenience we are also including two pieces from one of our AZ members, Barbara Klein (who served on the NPV committee).

- 1) a 4-page chart summarizing League papers of pros/cons
- 2) accompanying and additional analysis of study results (additional to LWVUS results)

Quick Summary of National Popular Vote Plan (as described in source book *'Every Vote Equal'*)
For a detailed summary, review the NPV Compact Proposal BACKGROUND paper on the LWV website.

The National Popular Vote bill would guarantee a majority of the Electoral College to the presidential candidate who receives the most popular votes in all 50 states and the District of Columbia. The bill would reform the Electoral College so that the electoral vote in the Electoral College reflects the choice of the nation's voters for President of the United States

Under the U.S. Constitution, the states have exclusive and plenary (complete) power to allocate their electoral votes, and may change their state laws concerning the awarding of their electoral votes at any time. Under the National Popular Vote bill, all of the state's electoral votes would be awarded to the presidential candidate who receives the most popular votes in all 50 states and the District of Columbia. The bill would take effect only when enacted, in identical form, by states possessing a majority of the electoral votes—that is, enough electoral votes to elect a President (270 of 538).

Advocacy Statement

State Leagues in the five states where NPV has been enacted, or in the many states where it is now introduced, have been sidelined because we have no national position and thus have to remain neutral on the NPV plan. This makes us irrelevant on a subject, which is so relevant to our purpose – namely respecting every vote equally. **A position is needed.**

For full disclosure, our state League DID support the NPV compact as **one possible alternative** to achieve direct election of the president. There was ALSO support to continue to eliminate the Electoral College and/or to consider other plans that might arise to achieve the League's long-standing goal of direct election of the president.

We are strong advocates of a constitutional amendment to establish direct election of the president. We support more uniform voting procedures. We also support the NPV compact. None of these efforts are mutually exclusive. Based on a review of consensus form comments, we concluded that because of the wording of the questions, many Leagues were not clear that there was a choice to SUPPORT BOTH: a constitutional amendment and the NPV compact for achieving one person, one vote for president.

A constitutional amendment is the place to arrive. Indeed, **Suffrage** was won ultimately by amendment. However, it began with adoption by states, NOT with an amendment. Those women did not wait for Congress to pursue a constitutional amendment, they pushed the issue forward. We believe that the NVP plan could jump-start the amendment discussion.

While LWVUS has had a position to abolish the Electoral College for 40 years, we have had little impact on working toward the goal. There has been little energy for the reform in Congress and LWVUS has not often made it a priority because there has not been a practical way to achieve it. [Priorities are set with many issues in mind, and practicality or a realistic chance of winning is part of setting them.]

We also heard from a member (president of a local league) who is a member of the National Association of Social Workers. She described the Interstate Compact for the Adoption of Children and the advantages that it offers when dealing from state to state. She reminded us of the importance of identical language from state to state in an interstate compact. Related to the NPV compact, this is what safeguards each participating state's rights regarding if and when the compact would go into effect. Just to be sure, it sets rules in the legal contract for many rare and unexpected situations.

Update

Five states (Hawaii, Illinois, Maryland, New Jersey and Washington) have now enacted the bill, representing more than a fifth of the electoral votes necessary for direct elections to govern future presidential elections. Specifically this is 23% (61 of 270 electoral votes), more than during our study.

There is public support from more than 1,775 state legislators, and NPV compact has been passed by 29 of our 99 US state legislative chambers.

While allied organizations (like Common Cause, NAACP, FairVote, Public Citizens), as well as many advocacy groups, numerous newspapers and many congressional leaders have publicly supported the effort, the League has remained silent, even though we support direct election of the president.

Research shows that more than 70% of American VOTERS support direct election of the president, where every vote is equal (see League materials). The League supports the same – not the gamesmanship of the Electoral College.

The National Popular Vote Compact Proposal

(Below is more summary from LWVUS background paper – this section is included only for your convenience as it is part of the collection of LWVUS papers on NPV).

The National Popular Vote Compact proposal offers a method of achieving the result of election of the President by popular vote without amending the Constitution to eliminate the Electoral College. Instead, this method uses the mechanism of the Electoral College to ensure that the candidate who receives the most popular votes is elected President of the United States.

Under the proposed legislation to enact the National Popular Vote Compact, all of the state's electoral votes would be awarded to the presidential candidate who receives the most popular votes in all 50 states and the District of Columbia. The bill would take effect only when enacted, in identical form, by states possessing a majority of the electoral votes—that is, enough electoral votes to elect a President (270 of 538)

The NPV Compact proposal is predicated upon the portion of the United States Constitution which states: "Each State shall appoint, in such Manner **as the Legislature thereof may direct**, a Number of Electors..." (*Article II, Section 1, Clause 2*) (emphasis added)

The constitutional wording, "as the Legislature thereof may direct," contains no restriction on the states' exercise of their power with respect to their electors. The U.S. Supreme Court has repeatedly characterized the authority of the states over the manner of awarding their electoral votes as "plenary" and "exclusive." Therefore, the states have the right to decide how to select their electors and award their electoral votes. Thus, proponents of the NPV Compact claim that the U.S. Constitution need not be changed in order to implement nationwide NPV. Rather, they maintain, this change can be accomplished in the same way that the current system evolved—namely, the states will use their exclusive and plenary power to decide the manner of awarding their electoral votes.

An additional constitutional underpinning of the NPV is the Compact Clause (*Article I, Section 10, Clause 3*), which permits states to enter into legally enforceable contractual obligations to undertake agreed joint action with other states. Interstate compacts are typically used to address problems that concern more than one state—the states which are affected enter into a compact (contract) which regulates their actions, ensuring uniform response by the states to address their mutual concerns. These contracts are typically enacted through the passage of identical legislation by the compacting states.

Under the state legislation proposed to establish the NPV, the popular vote counts from all 50 states and the District of Columbia would be added together to obtain a national grand total for each presidential candidate. Then, state elections officials in all states participating in the plan would award their electoral votes to the presidential candidate who receives the largest number of popular votes in all 50 states and the District of Columbia. The NPV Compact plan would take effect only when it has been enacted by states collectively possessing a majority of the electoral votes. The 270-vote threshold also corresponds essentially to states representing a majority of the people of the United States. As a result, every vote in all 50 states and the District of Columbia would be equally important in presidential elections.

The compact contains a six-month blackout period during which no state can withdraw from the compact. The blackout period starts on July 20 of each presidential election year and runs through the January 20 inauguration. Interstate compacts are contracts. It is settled compact law and settled constitutional law that withdrawal restrictions—very common in interstate compacts—are enforceable because the U.S. Constitution prohibits a state from impairing any obligation of contract.

The legislation contains other procedural provisions that would ensure the smooth functioning of the agreement. For example, one clause addresses the possibility of a tie in the national popular vote. If there is no national popular vote winner, each state chooses the electors for the candidate who has won that state.The full text of the compact is available at www.lwv.org as is the rest of this background paper and all the other LWVUS documents from the study.

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